

The Gazette of India



EXTRAORDINARY

PART II—Section 3

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No. 25] NEW DELHI, WEDNESDAY, FEBRUARY 10, 1954

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 1st February 1954

S.R.O. 472.—Whereas the election of Shri Raghuraj Singh as a member of the Legislative Assembly of the State of Madhya Bharat, from the Khilchipur East constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Shantilal Chowdhary, s/o Shri Hastmal Chowdhary, advocate, Rajgarh, Madhya Bharat State;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, AT INDORE (MADHYA BHARAT)

ELECTION PETITION No. 188/52A

Shri Amar Nath Segal, B.Sc. (Hons.), LL.B., *Chairman.*

Shri R. N. Shingal, B.A., LL.B., *Member.*

Shri M. B. Rege, B.A., LL.B., *Member.*

Shantilal Chaudhary s/o Hasatmal Chaudhary, Advocate, Rajgarh, District Rajgarh—*Petitioner.*

Vs.

1. Raghuraj Singh, s/o Dashrath Singh, resident of Khilchipur, District Rajgarh;
2. Hari Singh, s/o Fateh Singh, Sondhia village Badgaon Tappa Zirapur, Tehsil Khilchipur, District Rajgarh;
3. Vithaldas Bohra, s/o Kanhaiyalal, r/o Khilchipur, District Rajgarh;
4. Ram Parshad, s/o Ramlal Goldsmith, r/o Khilchipur, District Rajgarh;
5. Kailash Narayan, s/o Vithaldas Sharma, resident of Khilchipur, District Rajgarh;
6. Hamgilal, s/o Ramlal Goldsmith, Khilchipur, District Rajgarh—*Respondents.*

M/s. D. C. Bharucha, C. B. Sanghi and S. R. Joshi—for the *Petitioner.*

M/s. G. M. Chaphekar, W. Y. Pande—for the *Respondents.*

ORDER

The Petitioner Shri Shantilal Choudhary has challenged the Election of Respondent No. 1 Shri Raghuraj Singh, s/o Dashrath Singh on the following grounds:—

1. "That the Returning Officer wrongly accepted the withdrawal of respondent Nos. 5 and 6 as the applications for withdrawal under section 37 of the Representation of the People Act 1951, were not presented to the proper person in proper time" (Para. 6 of the petition).

2. "That the votes obtained by respondents No. 1 and 2 are void and invalid in as much as they were obtained by means of corrupt and illegal practices" (para. 5 of the petition).

3. "That the Polling Station of Ramnagar was wrongfully attached to this Constituency in direct contravention of the order of the President of India published in the Official Gazette in September 1951" (para. 17 of the Petition).

The Petition as presented to the Election Commission was accompanied by seven lists giving particulars of the alleged corrupt practices without the requisite verification at their foot. The lacuna was brought to the notice of the petitioner by the Secretary, Election Commission by his letter No. 19/188/52-Elec.III, dated 21st June 1952 whereupon the Petitioner sent to the Election Commission verifications typed on a single sheet of paper. The petition was sent to us by the Commission with the said paper and other connected papers with intimation to the petitioner that the action was without prejudice to objections which may be raised.

An objection was taken to the lists of Shri Raghuraj Singh, the sitting member who is the main contesting respondent and on 1st November 1952, we granted leave to the petitioner to add the verifications, on every single schedule. The Petitioner then presented several slips with the verification typed thereon; and by our order, dated 28th November 1952, we held that this was not a sufficient compliance with our previous order. The operative part of the order is:—

"Extension of time for filing verifications to the lists is refused. The allegations of corrupt and illegal practices which were required to be embodied in the said lists under Section 83(2) of the Representation of the People Act will not be enquired into".

Against this order the Petitioner applied to the Hon'ble High Court under Article 227 of the Constitution of India but his application was dismissed on the ground that the Tribunal had acted within its jurisdiction. The Petitioner then applied for a review of our order, dated 28th November 1952. The application purported to be under sections 151 and 153 read with order 47 Rule 1 of the Civil Procedure Code. This application was disposed of by our order, dated 18th September 1953 wherein it was held that we had no jurisdiction to review our orders under section 151 of the Civil Procedure Code and that it was only under section 114 of the Civil Procedure Code read with Order 47 Rule 1 that the power could be exercised in proper cases. It was also held that section 153 of the Code had no application. Another application for review purporting to be under Order 47 Rule 1 was also rejected by us on 3rd October 1953. Then followed an application for a re-consideration of our order of 28th November 1952 *Ex debito Justitiae* and this was dismissed by our order, dated 20th October 1953.

The Petitioner Shri Shantilal had on 20th November 1952 made an application for judgment being passed under Order 12 Rule 6 of the Civil Procedure Code on the "admissions" made by the respondents. The application was set down for hearing but in the meanwhile proceedings before us were stayed by an order of the Hon'ble High Court until the decision of the petition under section 227 above referred to. After the unsuccessful applications for review the Petitioner renewed his application, dated 20th November 1952.

On 28th November 1952, the following issues were framed on the pleadings other than the corrupt practices detailed in the lists which were excluded by our order of the same date:—

1. (i) Did the Returning Officer wrongfully accept the withdrawals of respondents 5 and 6 because they were not presented to the proper person at the proper time?

2. Was the polling station of Ramnagar attached to the Constituency No. 49 Khilchipur East in contravention of the President's orders in this behalf that has materially affected the result of the Election?

An additional issue was framed on 30th October 1953.

- 1(2) If so has the wrong withdrawal materially affected the result of the claim?

The Petitioner who argued his case himself referred to the preamble to the Constitution of India which declares the resolve of the people of India *inter alia* to secure to all citizens justice—social, economic and political and urged that our approach to the case must be in the back ground of political considerations. He relied in support of his plea on the cases of Allahabad Khan V. Sardar Mohammad Azam reported in D.I.E.C. (vol. II page 314 and 315) and Amir Mohammad Khan V. Atta Mohammad Khan (D.I.E.C. Vol. I page 98), but the decision do not support the wide proposition of the petitioner. It is true that the conduct of the trial of an Election Petition must not be left to the caprice of the parties and it ought to be the concern of the Tribunal to purge the Election of all kinds of corrupt practices and impurities so as to guard the political rights of the citizens and the Constituency; but this does not in our view justify a departure from legal principles. We are clear that political justice is concerned with the political rights of the citizen, but its administration is governed not by politics but by law, equity and good conscience.

A plea was advanced that our order, dated 28th November 1952 is *ultra vires* to the extent that the majority view, that allegations of corrupt practices in the Petition would not be enquired into was not justified as a corollary to the refusal to grant leave to add the verifications. What matters, however is the operative part of the order which barred enquiry into such *allegations as were required to be embodied, in the lists*; and that is how we have interpreted our intention of the order of the majority on 28th November 1952. Again the Petitioner had the vires of the order determined by his application to the High Court under Article 227 of the Constitution and in view of the decision therein that the order was fully within our jurisdiction, the plea of *ultra vires* is not now open to him.

As stated above we have before us an application for judgment on the admissions under Order 12 Rule 6 of the Civil Procedure Code. This raised questions on which we thought it proper to invite the learned Advocate General to help us and we owe to him an expression of our appreciation of the fair and lucid exposition of the law on the subject. Two main questions were discussed:—

1. What is the effect of the want of verification of the lists?
2. To what extent could the admissions of the respondent be considered apart from the lists?

The first question has been considered by us in our order, dated 28th November 1952 but the contention of the Petitioner is that though the lists may be held to be not proper verified, we should treat them to be a part of the petition and consider them as such. There is no force in the contention. The legislature has in its wisdom provided, that in addition to the brief reference in the petition itself, lists giving all particulars of the alleged corrupt practices must accompany the petition and such lists must be duly verified. The unverified lists filed in this case do not fulfil the requirements of law and we would be departing from legal principles were we to look into them in deciding the petition itself.

For a decision of the second question it is necessary to examine the statements relied upon by the Petitioner as admissions of the respondent. Before proceeding to examine the statements, however, we would refer to an objection raised on behalf of respondent No. 1 by Shri Chaphekar. His contention is that the alleged admissions have been made without prejudice to the preliminary objection that the lists could not be looked at as they were not duly verified.

The words "without prejudice" mean that the person simply makes an offer which if not accepted is to have no effect at all. Section 23 of the Evidence Act lays down that in Civil Cases no admission is relevant if it is either expressly stated or by necessary implication intended that no evidence of it should be given, but there is authority for the view that this Section does not cover cases of letters marked "without prejudice", as at best the words show a desire on the part of one party to have a privilege but the other party must also agree to respect it. (Lucknow Improvement Trus Vs Jaitly & Co. A.I.R. 1930 Sind 105 Madhaurao Vs. Gulas Bhai I.L.R. 22 p. 177). We think that even if privilege be claimable in

correspondence between the parties it would not apply to pleadings. Admissions pleadings provided they are explicit constitute a waiver of all controversy and limit the issues. The objection is in the circumstances of the case not tenable.

In para. 9 of his Petition, the Petitioner has alleged that "respondent 1 his agents and persons with his connivance offered, paid and promised sums of money in order to secure votes". In para. 11, he says "the election of the respondent No. 1 was materially promoted by the unauthorised publication and widespread advertisement of the decision of certain influential people". In his written statement, respondent No. 1 has denied the allegations *in toto*; but in his reply to schedule "B" para. 9 wherein particulars were given of the alleged bribery and it was alleged that the "respondent No. 1 got an appeal published in the name of various people exhorting them to vote for respondent No. 1 as it was decided by the popular leaders of the Constituency" and a leaflet described as the original appeal was attached to Schedule "B", the respondent has while denying the allegations of bribery, admitted that some prominent persons of the locality had issued an appeal and admitted the leaflet. The Petitioner contends that since the names of some Patels appear on the leaflet and since a sum of Rs. 71 appears in the Elections expenses as having been spent on printing the leaflet, it follows that a major corrupt practice has been committed. Mr. Chaphekar contends that for the purposes of the trial of the petition in any case, the particulars in the list B cannot be looked into and as regards the allegations in the petition itself there is a positive denial in the written statement.

It was suggested in the course of arguments that the provisions of the C.P. Code would not apply to the trial of Election Petitions save in the matters specially provided for and the specification was to be found in sections 92, 93 and 99 of the Representation of the People Act. We see no force in the contention. Section 90 of the Representation of the People Act provides that subject to the provisions of the Act, every Election petition shall be tried as nearly as may be in accordance with the procedure applicable under the Civil Procedure Code. It is obvious that Section 92 is intended to eliminate the possibility of the jurisdiction of the Election Tribunal being questioned as regards matters stated in Section 92 by a distinction being made between a Court and a Tribunal and that it does not limit the jurisdiction of the Tribunal to the matters mentioned therein. We are clear in the view that a judgment on admission could in proper cases be given by us provided as stated above, the admission is clear expressly or by necessary implications.

We are, however, of opinion that the alleged statements by respondent No. 1 do not amount to such admissions, the order of this Tribunal, dated 28th November 1953 excludes the consideration of the particulars in the list and there is in the written statement a complete denial of the allegation in the petition. We have given an anxious consideration to the statements even as the Petitioner would have no look at them; but as regards the leaflet, there is no admission of the Patels having signed them nor of the respondent No. 1 having taken any part in its printing or broadcasting it. A judgment cannot, therefore, be founded on the statements under Order 12 Rule 6 of the C.P.C.

On the first part of issue No. 1, we have the statement of the Petitioner who says that he was present in the Raigarh Collectorate on 26th November 1951 and that the Collector Shri Ram Singh Bawal did not reach the office till about 4.30 or 4.45 P.M. on that day. He admits, however, that he did not enquire where the Collector was. It is also strange that notwithstanding the gross illegality alleged, no protest was made on the spot although the Petitioner continued to be in the Collector's office premises till after 6 P.M. on that day. Mangilal P.W. 2 is a candidate who had presented an application for the withdrawal of his candidature. He says the Collector was not in his office till 4 P.M. when he Mangilal left the premises, and that the application was delivered by him to Shri Dulesingh, Revenue Assistant. Mangilal was a Congressman but since the disapproval of the candidate set up by the Congress he became dissident and filed his nomination as an independent candidate along with others including one Shri Ram Parshad. After the Election he returned to his fold and is now the President of the Khilchipur Pargana Congress.

P.W. 2 Madanlal says that he had gone to the Collectorate to get his symbol. He says he did not get it; but a chaprasi told him at about 2-30 P.M. or 3 P.M. that the Collector was not in. Shri D. M. Kutamble, an advocate of the Madhya Bharat High Court had also sent an application for withdrawal of nomination through his clerk Kamalkishore. His statement is hearsay. Kamalkishore says

that he with one Shri Rathī went to the Collectorate but the Collector who was the Returning Officer was not in till 3-30 P.M. and therefore, the form was presented to the office Superintendent. The witness says he left for Indore that day at 3-30 P.M. He did not know the Collector nor the Office Superintendent and his statement like that of Madanlal is not, therefore, helpful.

Bhikulal, then a Congress worker and now President of the Khilchipur City Congress says he had gone to the Additional District Magistrate's Court on 26th November 1951. This office is on the upper floor of the Collectorate. He went up without looking for the Collector at 12 noon and came down at about 4 P.M., when he saw persons who had come to present withdrawal forms. He went into the two or three rooms occupied by the Collector but could not see him. This witness is a partisan and even if he be believed his statement does not prove that the Collector was not in at the required hours viz. 3 P.M. Basantilal the President of the Khilchipur Tehsil Congress says that he was at the Collectorate from about 1 P.M. to 4 P.M. and the Collector was absent. To assure himself of the absence he went at 3 P.M. to the Collector's room and found it empty. The Revenue Assistant told him that the Collector was probably on tour. Shri Vallabh had gone presumably with Kamalkishore whom he describes as Shri Kutamle's motor driver to present Shri Kutamle's application for withdrawal. He presented the application to a clerk in the Collectorate. He says that not finding the Collector in he tendered the application to the clerks who told him that the Collector was out but would soon be returning and that the application should be presented to him. Being however in a hurry to go back he, the witness, pressed them to accept it. The doors of the Collectorate room were closed.

All the evidence for the petitioner has been commented upon by the respondent's learned counsel as being of persons who are deeply interested as belonging to the political creed of the Petitioner and that the version given by them is unnatural; and it must be said that the comment is not unfounded. We have Shree Vallabh saying that he found the doors of the Collector's room closed while Basantilal says he went through the formality of going through all the rooms of the Collectorate to discover whether the Collector was really out. Such tall statements detract from the value of the evidence, and makes it unconvincing. On the other hand the Collector Shri Ram Singh and his Election Clerk Shiv Narayan have pledged their oath that the Collector was present and in fact received the applications. There has been severe comment by the petitioner on the admission of the Collector that the endorsements on the forms are not in his hand but that of his Assistant Shri Dulesingh. It would have been prudent for the Collector to have made the endorsement in his own hand; but there is no express provision in law that the endorsements must be in the hand of the Returning Officer and the omission does not detract from the value of the evidence given by the Collector or his clerk. We would hold that there is no proof of improper presentation of the form, and in this view it is unnecessary to consider the second part of the issue.

The plea regarding transplantation of villages from the Constituency is also without substance. The India Government Gazette, dated 30th June 1951 contains the order of the President of India which was affirmed on 8th September 1951. The Petitioner's contention is that the villages of Ramnagar Constituency were put in the Zirapur Tappa by a Notification in the Madhya Bharat Gazette, dated 12th May 1951 that is prior to the notification by the President. It is however clear that the polling stations were notified in accordance with the order of the President of India and the Election was not in contravention of the notification. The Petitioner and the voters in the Constituency were not ignorant of the notification of polling stations and no protest was made. The President of India is the final authority for delimitation purposes and the notification of the State Government cannot override that of the President in matters affecting delimitation.

We have given our anxious consideration to the propriety of our enquiry *suo moto* into the allegations made by the Petitioner of corrupt practices on part of the respondents and others for the purpose of action under section 99 of the Representation of the People Act. In our opinion there is no bar to such an enquiry provided we are properly seized of the matter and there is material which could be made the foundation of the enquiry. We have in this case allegations of an appeal having been signed *inter alia* by Patels who are public servants, and of the appeal having been printed at the cost of the Petitioner. The appeal is a printed leaflet; but the original draft is not before us and there is no possibility of its being had. The bill for the printing is in the name of a person other than the petitioner and clear proof of the signatures and the complicity of respondent

No. 1 cannot be expected. We, therefore, consider it futile to embark on an enquiry particularly at this late stage.

The Petition is, therefore, dismissed. The Petitioner shall pay aggregate costs amounting to Rs. 150 to respondent No. 1 Raghuraj Singh, Rs. 75 to respondent Hari Singh and Rs. 50 to respondent Kailashnarayan.

(Sd.) AMAR NATH, *Chairman.*

(Sd.) M. B. REGE, *Member.*

(Sd.) R. N. SHINGAL, *Member.*

The 31st December, 1953.

[No. 19/188/52-Elec.III/2204.]

By Order,
P. R. KRISHNAMURTHY, Asstt. Secy.